

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

32.00

LAW ENFORCEMENT

Date Issued: May 20, 1997

I. Background:

This WISHA Regional Directive (WRD) establishes guidelines for the inspection and citation of alleged violations found in law enforcement field operations and equipment. It is understood that law enforcement by nature is an unpredictable and inherently dangerous occupation dealing with volatile and constantly changing incidents. It is necessary for the compliance officer to understand that inspection of law enforcement is different by virtue of law enforcement's mission to respond and handle unsafe situations. This WRD provides WISHA Consultation and Compliance staff with a guide as to how WISHA standards apply to law enforcement and how those standards must be enforced.

Chapter 49.17 of the Revised Code of Washington (RCW), known as the Washington Industrial Safety and Health Act (WISHA) gives the Department of Labor and Industries (L&I) both the obligation and the authority to conduct WISHA inspections of any Washington employer to ensure that each employer is meeting his or her obligation to "furnish to each of their employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to their employees (RCW 49.17.060(1)).

In pursuing this statutory obligation in relation to general authority law enforcement agencies, L&I faces some unique challenges. Although law enforcement agencies are subject to the same statutory and regulatory requirements as other employers, the unique circumstances of this particular category of employer justify several adjustments in L&I's normal enforcement protocols.

- A. Methodology: The law enforcement task force met on a monthly basis and included participation of the following:

Washington Association of Sheriffs and Police Chiefs (WASPC)
Mill Creek Police Department
Clark County Sheriff
Cowlitz County Sheriff
Steilacoom Department of Public Safety
City of Tacoma
Washington State Patrol Troopers Association
Washington State Patrol
Washington State Council of Police Officers
Department of Labor and Industries
Washington State Law Enforcement Association
Teamsters Joint Council #28, Public Employee Division

- B. Goals: In addition to fostering a strong commitment to worker safety and viable relationship between the law enforcement community and L&I, the goal of the Law Enforcement Task Force was to develop a WRD that would be applicable on a statewide basis that would clarify L&I's expectations and involvement in a manner that recognizes the needs of law enforcement and promotes worker safety.
- C. Decision Making: The following WRD is a result of mutual cooperation, creative problem solving, compromise, and the universal recognition that all will receive the benefits of a safe working environment. All decisions were arrived at by the consensus method of decision making.

II. Scope and Application:

This WRD shall apply with respect to any and all activities, operations, and equipment of general authority law enforcement agencies as defined in RCW 10.93.020 which excludes limited authority personnel involved in providing law enforcement services which are subject to the provisions of the Washington Industrial Safety & Health Act of 1973 (Chapter 49.17 RCW).

This WRD is subject to further periodic review as necessary by a law enforcement task force to include representatives from labor, management and L&I.

III. Interpretative Guidance:

Law enforcement employers are subject to all applicable provisions of Chapter 296-24, General Safety and Health Standards, Chapter 296-27, Recordkeeping and Reporting, and Chapter 296-62, General Occupational Health Standards, of

the Washington Administrative Code (WAC). The guidance provided below applies to those areas where the unique issues related to law enforcement may cause conflict or confusion. It does not in any way exempt law enforcement employers from compliance with other applicable standards.

Generally, the guidance provided below focuses on the activities away from the police station or other central facilities.

- A. WAC 296-24-040 requires each employer to “develop a formal accident-prevention program (APP), tailored to the needs of the particular plant or operation and to the type of hazards involved.” This requires any law enforcement employers to provide guidance regarding hazards related but not limited to patrol, arrests, raids, vehicle pursuits, as well as any other hazards unique either to law enforcement or the particular employer. Law enforcement employers who have not provided such guidance as part of their written APP shall be cited for such a deficiency (in the absence of a documented serious hazard, initial APP citations shall be typed “general” and no penalty issued.)
- B. WAC 296-24-060 includes a series of requirements “to assure that all employees of this state can be afforded quick and effective first-aid attention in the event that an injury occurs on the job.” The application of the fixed establishment portions of this standard to law enforcement raises no special challenges. The requirements of WAC 296-24-060(4) that “in physically dispersed operations, at least one member of each crew shall have a valid first-aid certificate” apply to patrol and other dispersed operations where more than one employee is present.
- C. The first-aid kit requirements of WAC 296-24-065 apply to patrol vehicles, requiring a basic first-aid kit even when only one employee is normally present.
- D. WAC 296-24-073(1) requires all employers “to furnish each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death” to employees, while WAC 296-24-073(2) requires all employers to “furnish and use safety devices and safeguards” and to “adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe,” as well as to “do everything reasonably necessary to protect the life and safety of employees.”

In applying this “safe place” standard to law enforcement, L&I recognizes the inherent risk of certain law enforcement duties. It is, however, such risks that makes it important that those reasonable levels of protection contemplated by the standard are provided. In determining what represents a reasonable level of protection, compliance staff shall follow the guidance and review procedures in the WISHA Compliance Manual (IV.B.2.c.)

In applying this guidance to law enforcement employers, particular attention must be paid to ensuring that at least one of the following three elements is present:

- Industry recognition of the hazard (particularly in the form of certification or accreditation guidelines by organizations including but not limited to: Washington Association of Sheriffs and Police Chiefs (WASPC), Washington State Criminal Justice Training Commission (WSJTC), the Commission on Accreditation for Law Enforcement (CALEA), Washington State Council of Police Officers (WSCPO), and the Department of Justice (DOJ);
- Employer recognition of the hazard (based on the relevant policy and procedures as adopted by the employer);
- Common-sense recognition (this “reasonable and prudent” person criterion shall be used only in flagrant cases and should not be used simply to substitute the inspector’s judgment for that of the employer).

In addition, particular care must be given to the need to identify a feasible and useful method of correcting the hazard as part of any safe place citation of a law enforcement employer. For example, the risk of a gun shot wound while arresting a violent, armed offender will certainly qualify as a “recognized” hazard. However, it would be clearly inappropriate to cite a law enforcement employer unless there are methods of abatement available that would clearly and significantly reduce the hazard beyond any measures currently taken by the employer. In making such a determination, considerable deference shall be paid to the employer’s own relevant policy and procedures.

- E. WAC 296-24-07501 addresses the employer obligations with regard to personal protective equipment (PPE) required by the job. Requirements include:

- PPE be assessed and the assessment be noted in writing.
- Selection and use of appropriate PPE.
- PPE is properly fitted.
- The employees are properly trained in the use of PPE and this training is documented.
- Determining when the use is minimally necessary and require use at such times.

Failure to meet any obligations under this section may result in the appropriate citation under WAC 296-24-07501.

Body armor is PPE within the context of the standard. The employer must provide training in the use and limitations, proper fit, and ensure it is worn when necessary. The assessment of the need to wear body armor must be credible, i.e., indicating that armed police officers never have a need for body armor or that wear is always at the officer's discretion is not credible.

Items that are used for self-defense (such as night sticks, capstuns, and firearms) but do not in and of themselves provide protection to employees are not considered PPE by L&I. They can and should be addressed within the context of safe place and APP requirements, particularly related to training.

- F. Although the industrial hygiene requirements of Chapter 296-62 WAC apply to law enforcement as to any other employer, several specific areas should be given specific consideration by both law enforcement employers and L&I compliance staff. Sections outlined below are examples from the general requirements but should not be considered as an exclusive list:
- 1) The hearing conservation requirements of WAC 296-62-09015 through WAC 296-62-09055 should be given particular attention in relation to cab noise in total, to include sirens and radio volume. This also pertains to shooting range activities.
 - 2) The confined space requirements of WAC 296-62-145 through WAC 296-62-14529 should be given particular attention if officers will be expected to enter confined spaces as part of their duties.
 - 3) The bloodborne pathogen requirements of WAC 296-62-08001 should be given particular attention in relation to the potential for contact with human blood or other potentially infectious materials.

- 4) The requirements related to protection against airborne lead exposure in relation to shooting range activities found in WAC 296-62-07521 should be given particular attention.

IV. Special Inspection/Consultation Protocols:

- A. Only WISHA compliance and consultation safety and health officers (CSHO) authorized by the appropriate manager and trained and/or experienced in law enforcement operations shall be allowed to conduct inspections of field operations or law enforcement scenes.
- B. In places where there are no such (CSHOs), or where their number is limited or they are over-extended, the CSHO supervisor shall contact the regional compliance/consultation manager when the need for authorized personnel arises. Arrangements will be made to make such personnel available to the region needing them.
- C. The regional manager, in consultation with the attorney general and the WISHA policy and technical services (WISHA P&TS), shall decide as soon as practical whether expert assistance from outside the agency will be needed. Experts shall be contacted at the earliest practical time to arrange, if possible, for involvement in the inspection walk.
- D. In the event that an inspection involves an active law enforcement scene (for example, accident, crime, hostage, barricaded individual) regardless of whether the employer is the law enforcement agency, *WISHA staff shall not enter the crime scene until the law enforcement officer with active control over the scene indicates that they may do so.* This does not restrict staff's ability to pursue his or her inspection through interviews or other methods that do not interfere with the activities at the scene or require immediate entry to the site.
- E. To the extent possible without compromising the unannounced nature of an inspection, WISHA compliance staff shall pay deference to the professional activities of a law enforcement employer. For example, it will rarely be necessary to immediately review APP and other written documentation. If necessary to avoid interfering with the law enforcement employer's activities, appointments to review such supporting documentation may be scheduled with the approval of the WISHA compliance supervisor (see WISHA Compliance Manual, I.E.3.6.a.4. for more detailed guidance on handling delays of inspections).

- F. WISHA staff shall not exercise their immediate restraint authority under the provisions of RCW 49.17.130 in relation to any law enforcement activities in the field, including vehicles on patrol (this does not prevent the exercise of such authority in relation to patrol vehicles while in the motor pool or otherwise not currently assigned for duty).
- G. Any law enforcement inspection involving a “safe place” citation shall be issued only after consultation with both WISHA P&TS and the office of the attorney general (AGO).
- H. Any citation determining that an employer’s PPE assessment is not credible, although the employer has otherwise met the requirements, shall be issued only after consultation with WISHA P&TS and the AGO.
- I. If there are issues relating to “dual employer” or “off duty relations,” citations shall only be issued in consultation with the attorney general and the WISHA P&TS.

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